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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/051,406

01/18/2002

Chuck Jennings

106121

9625

27148

7590

11/07/2007

POL SINELLI SHALTON FLANIGAN SUELTHAUS PC

700 W. 47TH STREET

SUITE 1000

KANSAS CITY, MO 64112-1802

EXAMINER

CALDWELL, ANDREW T

ART UNIT

PAPER NUMBER

2142

MAIL DATE

DELIVERY MODE

11/07/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**UNITED STATES DEPARTMENT OF COMMERCE****U.S. Patent and Trademark Office**

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10051406	1/18/2002	JENNINGS ET AL.	106121

EXAMINER

Andrew Caldwell

POLSINELLI SHALTON FLANIGAN SUELTHAUS PC
700 W. 47TH STREET
SUITE 1000
KANSAS CITY, MO 64112-1802

ART UNIT	PAPER
2142	20070719

DATE MAILED:

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Commissioner for Patents

See attached.

Art Unit: 2142

On July 7, 2006, the Office mailed a notice of allowance in this application. Accompanying the notice of allowance was an examiner's amendment to the claims. The notice of allowability asserted that the examiner's amendment to the claims was approved by the Applicants' attorney, James Stipek, on June 23, 2006.

When the Response to Examiner-Initiated Interview Summary, filed September 15, 2006, was brought to my attention, it appeared that there was a serious question as to whether the examiner's amendment mailed June 7, 2006 had actually been approved by the applicants' attorney. After considering the file history and reviewing the matter with Andrew Caldwell, the supervisory patent examiner to whom the application is currently assigned, I have concluded, based on the preponderance of the evidence, that the examiner who had prepared the notice of allowability and examiner's amendment, Stephan Willett, had not actually received the Applicants' permission to enter the examiner's amendment. Accordingly, the notice of allowability dated July 7, 2006 should never have been mailed since it included an unauthorized amendment to the claims.

On July 10, 2006, an interview summary intended for this application was inadvertently matched to the wrong application, 10/051,405, and then mailed to the wrong address. The interview summary was matched to the wrong application because Examiner Willett created the interview summary using the wrong serial number. The interview summary has been moved from the wrong application to the correct application in the USPTO's Image File Wrapper (IFW) system.

As to the substance of the interview summary mailed on July 10, 2006, based upon my review of the file wrapper and my conversations with the supervisory patent examiner assigned to this application, I have concluded that the interview summary was mailed in an attempt to justify an unreasonable position taken by the former examiner assigned to this application, Stephan Willett. Examiner Willett attempted to deny entry to the after final amendment filed by the applicants on May 23, 2006 because it contained new claims directed to a system corresponding to the pending method claims. Although the USPTO would normally deny entry to an amendment submitting new claims without cancelling a corresponding number of pending claims under these circumstances, the supervisory patent examiner assigned to the application, Andrew Caldwell, instructed Examiner Willett to enter the amendment based upon a promise made to the applicants to enter such an amendment "upon allowance of the pending method claims" during an interview initiated by the examiner in June 2005. See p. 18 of applicants' remarks filed on November 30, 2005. After reviewing the July 10, 2006 interview summary, I have concluded that the interview held on July 10, 2006 was initiated by Examiner Willett to belatedly get on the record his version of the substance of the interview held in June 2005. As a matter of policy, the substance of an interview should be recorded reasonably contemporaneously with the interview. In this case, Examiner Willett attempted to record the substance of an interview more than a year after the fact. Such a long delay in recording the substance of an interview is clearly unreasonable. The delay alone suggests that Examiner Willett's version of the substance of the interview should be given little weight. Furthermore, the substance of the applicants' interview summary filed on November 30, 2005 is unusual in stating that claims would be entered "after allowance." Based on my years of experience at the USPTO, I do not believe that any reasonable patent attorney

Art Unit: 2142

would make such a statement in summarizing an examiner's promise to enter amendments without believing that the attorney's characterization of the examiner's position was correct. Based on my review of the record and my discussions with Andrew Caldwell, the supervisory patent examiner assigned to this application, the applicants' attorney, James Stipek, has certainly behaved reasonably in prosecuting this application despite unusual circumstances. Accordingly, I have concluded that the summary of the interview prepared by the applicants' attorney, James Stipek, in the response filed on November 30, 2005 is correct and that Examiner Willett's summary adds nothing to the record and should be given no weight.

In order to help remedy this situation, I have directed the supervisory patent examiner to whom this application is assigned to close and make non-public the various files in the USPTO's IFW (Image File Wrapper) system associated with Notice of Allowability mailed on July 7, 2006. The files to be closed and made non-public files include:

Date	Doc Code	Description
6/23/06	SRNT	Examiner's search strategy and results
7/7/06	ANE.I	Amendment After Final or under 37CFR 1.312, initialed by the examiner
7/7/06	FWCLM	Index of Claims
7/7/06	RFW	Search information including classification, databases and other search related notes
7/7/06	IIFW	Issue Information including classification, examiner, name, claim, renumbering, etc.
7/7/06	BIB	Bibliographic Data Sheet
7/7/06	EXIN	Examiner Interview Summary Record (PTOL - 413)
7/7/06	NOA	Notice of Allowance and Fees Due (PTOL-85)
7/7/06	NOA	Notice of Allowance and Fees Due (PTOL-85)
7/10/06	EXIN	Examiner Interview Summary Record (PTOL - 413)

The USPTO regrets any inconvenience to the Applicants resulting from the mailing of the notice of allowance including the unauthorized examiner's amendment.

No response to this letter is required.

Paul Sewell
PAUL SEWELL
ACTING DIRECTOR
TC 2100